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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

BRADLEY LINS,

Petitioner,

v.

MONTANA PUBLIC EMPLOYEES'
RETIREMENT BOARD,

Respondent.

Cause No. BDV-2015-873

**ORDER ON
JUDICIAL REVIEW OF
DECLARATORY RULING**

On November 5, 2015, Petitioner Bradley Lins (Lins), by and through his counsel of record, and pursuant to Mont. Code Ann. §§ 2-4-501 and 2-4-702, petitioned this Court for judicial review of the Declaratory Ruling of the Montana Public Employees Retirement Board (PERB) regarding his entitlement to reinstate Public Employees Retirement Services (PERS) membership service. Oral argument was held on February 16, 2016.

FACTUAL BACKGROUND

Bradley Lins was an employee of Cascade County from 1991 to 1999. Lins occupied a covered position and was a member of PERS. During this tenure, Lins accumulated seven (7) years and nine (9) months of membership service

1 credit. Upon termination of his service with Cascade County, Lin's accumulated
2 contributions with the PERS were refunded.

3 On November 16, 2009, Lins was hired again by Cascade County and
4 chose to voluntarily decline membership with the PERS. In February of 2010,
5 pursuant to Mont. Code Ann. §§ 19-3-401 and 19-3-412, Lins became a member of
6 PERS and began accumulating PERS membership service when the total hours he
7 had worked exceeded nine hundred and sixty (960) for the fiscal year he was
8 employed by Cascade County.

9 In the course of his employment, Lins suffered work-related injuries
10 in March of 2014. The injuries required two surgeries in 2014. Lins received
11 workers' compensation temporary total disability benefits from April to November
12 of 2014. Upon being released to return to work by his surgeon, Lins was informed
13 by Cascade County that it could not accommodate his shoulder limitations and
14 terminated his employment on November 17, 2014. As of November 17, 2014,
15 Lins had accumulated four (4) years and ten (10) months of membership service
16 credit. On July 31, 2015, Lins sought to reinstate two (2) months of the
17 membership service (March and April of 1999) that was refunded in 1999,
18 pursuant to Mont. Code Ann. § 19-2-603.

19 On August 7, 2015, William Holahan, counsel for MPERA, sent a
20 response letter stating that Lins was not eligible to reinstate refunded service credit
21 because he did not meet the "active or vested inactive" status requirement of a
22 member to purchase service under Mont. Code Ann. § 19-2-704(2).

23 On August 21, 2015, Lins presented his Petition for Declaratory
24 Ruling to the PERB, pursuant to Mont. Code Ann. § 2-4-501. By his Petition, Lins
25 sought a declaratory ruling that reinstating refunded service under Mont. Code

1 Ann. § 19-2-603, is distinct from the “purchase or transfer” of service credit
2 contemplated in Mont. Code Ann. § 19-2-704(2). The crux of Lins’ argument was
3 that Mont. Code Ann. § 19-2-704(2) limits only the purchase or transfer of service
4 and his request is limited to reinstating withdrawn contributions by redepositing
5 refunded sums, plus interest, per Mont. Code Ann. § 19-2-603. Lins argued the
6 process of reinstating withdrawn contributions is entirely distinct from that of the
7 processes to purchase or transfer service and should not limited by Mont. Code
8 Ann. § 19-2-704(2) because according to the plain language of the statutes, Mont.
9 Code Ann. § 19-2-603 is neither subordinate to nor modified by Mont. Code Ann.
10 § 19-2-704(2).

11 Mr. Holahan responded on behalf of the MPERA on September 23,
12 2015 and the Petition was set for determination by the PERB in the closed portion
13 of its October 8, 2015 meeting. Mr. Holahan represented the MPERA at the
14 meeting and his co-worker Kate Talley was tasked with advising the PERB.
15 During the meeting, the PERB presented questions to Ms. Talley regarding the
16 facts and circumstances of Lins’ employment and Petition. Counsel for Lins
17 moved for a hearing to address the PERB’s factual and legal inquiries and at the
18 recommendation of Ms. Talley, the PERB denied Lins’ request.

19 Following Ms. Talley’s presentation of the facts and legal
20 recommendations, the PERB voted to decline the declaratory ruling sought by
21 Lins. Ms. Talley was asked to prepare a final written decision on behalf of the
22 PERB. The PERB agreed to review and finalize the Declaratory Ruling among its
23 members telephonically and the Declaratory Ruling was signed and issued by the
24 PERB on October, 19, 2015.

1 Lins now requests judicial review of the PERB's October 19, 2015
2 Declaratory Ruling, pursuant to Mont. Code Ann. § 2-4-704(2)(a)(iv) on the basis
3 that his substantial rights were prejudiced by an error of law in the PERB's
4 interpretation of the statutes at issue.

5 STANDARD OF REVIEW

6 An agency declaratory ruling is subject to judicial review as a final
7 written decision of the agency. Mont. Code Ann. § 2-4-501. Judicial review of a
8 final agency decision is governed by Mont. Code Ann. § 2-4-704. Review is
9 confined to the record and a court may only reverse or modify the agency's
10 decision if substantial rights of the appellant have been prejudiced because:

- 11 (a) the administrative findings, inferences,
12 conclusions, or decisions are:
13 (i) in violation of constitutional or
14 statutory provisions;
15 (ii) in excess of the statutory authority of
16 the agency;
17 (iii) made upon unlawful procedure;
18 (iv) affected by other error of law;
19 (v) clearly erroneous in view of the
20 reliable, probative, and substantial evidence on the
21 whole record;
22 (vi) arbitrary or capricious or characterized
23 by abuse of discretion or clearly unwarranted exercise of
24 discretion; or
25 (b) findings of fact, upon issues essential to the
decision, were not made although requested.

Section 2-4-704(2), MCA.

The court may not substitute its judgment for that of the agency as to
the weight of the evidence on questions of fact. *Id.* In reviewing conclusions of
law, the court must determine whether the agency's interpretation and application

1 of law are correct and must afford the agency's interpretation great weight,
2 deferring to that interpretation unless it is plainly inconsistent with the governing
3 authority. *Knowles v. State ex rel Lindeen*, 2009 MT 415, ¶ 22, 353 Mont. 507,
4 222 P.3d 595. The agency's interpretation "will be sustained so long as it lies
5 within the range of reasonable interpretation permitted by the wording." *Id.* (citing
6 *State Personnel Division v. Child Support Investigators*, 2002 MT 46, ¶ 63,
7 308 Mont. 365, 43 P.3d 305.)

8 DISCUSSION

9 Lins argues the PERB erred as a matter of law by failing to interpret
10 the statutory provisions at issue in accordance with the rules of statutory
11 construction. Mont. Code Ann. § 1-2-101, *et seq.* Additionally, Lins claims his
12 rights were affected by an error of law when the PERB exceeded its authority,
13 relying on invalid administrative rules to interpret the statutes at issue. Lins
14 contends, pursuant to Mont. Code Ann. § 19-2-603, a person who again becomes a
15 member of a defined benefit plan ... may reinstate [prior] membership service or
16 service credit by redepositing the sum of the accumulated contributions that were
17 refunded ... plus interest. The position of the PERB is that Lins is not entitled to
18 reinstate or repurchase service in PERS because he is not eligible under Mont.
19 Code Ann. § 19-3-401 as an inactive, nonvested PERS member for any benefits
20 from PERS other than a refund.

21 The PERS membership statute, Mont. Code Ann. § 19-3-401
22 establishes limits on the rights of inactive members – distinguishing between both
23 inactive vested members and inactive nonvested members, providing in relevant
24 part with emphasis added:
25

1 **19-3-401. Membership -- inactive vested members --**
2 **inactive nonvested members.**

3 (2) (a) An inactive member of the defined benefit
4 plan with at least 5 years of membership service is an
5 inactive vested member and retains the right to purchase
6 service credit and to receive a service retirement benefit
7 subject to the provisions of this chapter.

8 (b) If an inactive vested member of the defined
9 benefit plan chooses to take a lump-sum payment rather
10 than a retirement benefit, the lump-sum payment consists
11 of only the member's accumulated contributions and not
12 the employer's contributions.

13 (3) (a) **An inactive member of the defined**
14 **benefit plan with less than 5 years of membership**
15 **service is an inactive nonvested member and is not**
16 **eligible for any benefits from the retirement plan.**

17 (b) **An inactive nonvested member of the**
18 **defined benefit plan is eligible only for a refund of the**
19 **member's accumulated contributions.**

20 (Sections 1, 4, and 5 omitted).

21 An inactive member is one who terminates service and does not retire
22 or take a refund of the member's accumulated contributions, while a nonvested
23 member is one who has less than 5 years of membership service. Mont. Code Ann.
24 §§ 19-2-303(30) and (56). Lins does not dispute that he is an inactive, nonvested
25 PERS member. Accordingly, Mont. Code Ann. § 19-3-401 applies to him and
specifically provides that as a member with inactive, nonvested status, he is "not
eligible for any benefits from the retirement plan." A member with his status is
"eligible only for a refund." Lins requests more than a refund. He asks to reinstate
previously refunded service which would result in him immediately attaining
vested status and qualifying for a pension. The relevant statute does not allow him
to do so.

1 While Lins' Petition asserts that his rights hinge exclusively on Mont.
2 Code Ann. § 19-2-603, Montana law requires that statutes be interpreted in the
3 proper context. "We must read a whole act together and where possible we must
4 give full effect to all statutes involved." *Big Sky Colony, Inc. v. Mont. Dept. of*
5 *Labor & Indus.*, 2012 MT 320, ¶ 70, 368 Mont. 66, 291 P.3d 1231 (citing
6 *Delaney & Co. v. City of Bozeman*, 2009 MT 441, ¶ 22, 354 Mont. 181,
7 222 P.3d 618).

8 The context of PERS is well defined. As a qualified governmental
9 plan under Section 401(a) of the Internal Revenue Code, PERS must meet many
10 Internal Revenue Code requirements. These are contained in the PERS plan
11 document, composed of the applicable provisions of the Montana constitution and
12 Title 19 of the Montana Code Annotated, along with applicable rules policies and
13 documents adopted by the Board. Mont. Code Ann. § 19-2-1010. All PERS
14 members, including Lins, are subject to those provisions.

15 Lins' request is a request to purchase service, for which he is not
16 eligible. There are various types of service purchases in PERS but each is
17 authorized with the same purpose of allowing a member to pay additional
18 contributions upfront in exchange for receiving a greater benefit upon retirement
19 than he or she would otherwise be eligible to receive. Paying additional
20 contributions or "redepositing" money into the PERS trust fund outside of the
21 "regular contributions" required from members actively participating in PERS is
22 only allowed as specifically authorized. Mont. Code Ann. §§ 19-2-303(39),
23 19-3-315. Mont. Code Ann. § 19-2-704 specifically authorizes making additional
24 contributions to purchase service credits. This statute is titled "Purchasing service
25 credits allowed – payroll deduction" and is codified in Title 19, chapter 2, part 7,

1 which is titled “Service Credit and Additional Contributions.” Notably, the titles
2 of sections within an act are presumed to indicate the legislature’s intent. *Orr v.*
3 *State*, 2004 MT 354, ¶ 29, 324 Mont. 391, 106 P.3d 100. The title of this part and
4 section and the underlying authorization for the “redeposit of amounts withdrawn
5 under 19-2-602” to be made using the same payment methods and processes as
6 other types of service purchases indicate that a redeposit or reinstatement is in fact,
7 a service purchase. Mont. Code Ann. § 19-2-704(3)-(7).

8 “Subject to the rules promulgated by the board, an **eligible** member
9 may elect to make additional contributions to purchase service credits as provided
10 by the statutes governing the retirement system.” Mont. Code Ann. § 19-2-704(1)
11 (emphasis added). Similar to the relevant provision in PERS, this statute also
12 provides: “Subject to any statutory provision establishing stricter limitations, only
13 active or vested inactive members are eligible to purchase or transfer service credit,
14 membership service, or contributions.” Mont. Code Ann. § 19-2-704(2), MCA.
15 Thus, as an inactive, nonvested member Lins is not eligible to purchase service or
16 make additional contributions.

17 Lins unconvincingly relies on a mischaracterization of the applicable
18 administrative rules and fragments of statutory construction principles to support
19 his claim. “Statutory construction is a holistic endeavor and must account for the
20 statute’s text, language, structure and object. A court’s purpose in construing a
21 statute is to ascertain the legislative intent and give effect to the legislative will.”
22 *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426 (citations omitted).
23 The Montana Supreme Court has directed again and again that “statutes must be
24 read and considered in their entirety and the legislative intent may not be gained
25 from the wording of any particular section or sentence, but only from a

1 consideration of the whole.” *Id.* at ¶ 27 (citing *Home Bldg. & Loan Ass’n of*
2 *Helena v. Fulton*), 141 Mont. 113, 115, 375 P.2d 312, 313 (1962) and *State ex. Rel*
3 *Holt v. District Court*, 2000 MT 142, ¶ 7, 300 Mont. 35, 3 P.3d 608). Following
4 this directive, the Court is required to look beyond the single statute raised by Lins
5 and focus on the broader act authorizing PERS administration of the plan
6 document.

7 Lins’ argument against looking at the broader plan document
8 governing PERS overstates the plain meaning principle of statutory construction,
9 limiting interpretation of the “plain meaning of the words used” to those words
10 used in a single statute. (Brief in Support, page 6). However, this principle is not
11 so narrow as to require turning a blind eye to related statutes. The case Lins cites
12 to support his argument looks beyond a single statute in the act implementing the
13 State’s deferred compensation plan, to the broader act authorizing that plan.
14 *Montana Ass’n of Underwriters v. State*, 172 Mont. 211, 215-217, 563 P.2d
15 577-580 (1977). Lins further reliance on *Infinity Ins. Co. v. Dodson*, 2000 MT
16 287, 302 Mont. 209, 14 P.3d 487 (Brief in Support, page 8) is misplaced. The
17 *Infinity* decision does not prohibit recognition or review of more than a single
18 statute. To the contrary, that decision included a review of the plain language of
19 the Motor Vehicle Safety-Responsibility Act, not just a single statute contained
20 therein. That court determined, “in construing a statute, this Court must also read
21 and construe **each** statute as a whole so as to avoid an absurd result.” *Infinity* at
22 ¶ 46 (emphasis added).

23 Lins also argues that the Board erred by looking beyond Mont.
24 Code Ann. § 19-2-603 based on the principle of statutory construction prohibiting
25 a court from “adding to or subtracting from” a statute as provided in the first

1 sentence of Mont. Code Ann. § 1-2-101. (Brief in Support, page 6). However, he
2 fails to acknowledge the second sentence of that section, which directs the court to
3 look beyond a single provision. “Where there are several provisions or particulars,
4 such a construction is, if possible, to be adopted as will give effect to all.” Mont.
5 Code Ann. § 1-2-101. In light of the Montana legislature’s codification of this
6 statutory construction preference different portions of the code must be read
7 together where one part of the law “deals with a subject in general and
8 comprehensive terms, while another part of it deals in a more minute and definite
9 way.” *Schuman v. Bestrom*, 214 Mont. 410, 415, 693 P.2d 536, 539 (1985). See
10 also *City of Bozeman v. Racicot*, 253 Mont. 204, 208-209, 832 P.2d 767, 770
11 (1992) (“Where several statutes may apply to a given situation, such a
12 construction, if possible is to be adopted as will give effect to all.”) and *State*
13 *v. Heath*, supra. Consequently, while this is a difficult situation for Lins, the Court
14 is obligated to apply the law. The Court finds no error in the Board’s interpretation
15 of the PERS plan document or reliance on the plain meaning of the administrative
16 rules implementing it.

17 CONCLUSION

18 The Board correctly determined that Lins is not entitled to reinstate or
19 purchase service in PERS because he is not eligible under Mont. Code Ann.
20 § 19-3-401 as an inactive, nonvested PERS member for any benefits from PERS
21 other than a refund. Following Lins’ termination of PERS covered service in
22 November of 2014, he became an inactive PERS member as defined in Mont.
23 Code Ann. § 19-2-303(30) because he had less than 5 years of membership service
24 he was not a vested member of PERS as defined in Mont. Code Ann.


1 § 19-2-303(56). As an inactive, nonvested member of PERS, Lins is not eligible to
2 reinstate or purchase previously refunded service.

3 The Board's interpretation and application of law regarding Lins'
4 limited rights as an inactive, nonvested PERS member is correct and must be
5 sustained as consistent with the governing authority, the PERS plan document.
6 The Board's Declaratory Ruling satisfies the standards of review contained in
7 Mont. Code Ann. § 2-4-704, it is consistent with due process, does not prejudice
8 Lins' rights and is neither affected by error of law, nor clearly erroneous in view of
9 the whole record. The Board's ruling, while against Lins' personal interests,
10 conforms to applicable statutory provisions as well as the rules that the Board is
11 authorized to establish for the administration, operation, and enforcement of PERS.

12 The Board's interpretation and application of law regarding Lins'
13 limited rights as an inactive, nonvested PERS member is correct and consistent
14 with the governing authority. For this reason, the Board's declaratory ruling must
15 be sustained.

16 Based on the foregoing, **IT IS HEREBY ORDERED** the Public
17 Employee Retirement Board's Declaratory Ruling is **SUSTAINED**.

18 DATED this 1 day of July, 2016.

19
20 
21 DEEANN COONEY
22 District Court Judge

23 C: Ben A. Snipes, PO Box 2325, Great Falls, MT 59403
24 Katherine E. Talley, 100 North Park Avenue, Suite 200, Helena, MT 59620

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